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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,610	02/23/2004	Rodney E. Herrington	30750-1001	2964
5179	7590	05/05/2005	EXAMINER	
PEACOCK MYERS AND ADAMS P C P O BOX 26927 ALBUQUERQUE, NM 87125-6927				PHASGE. ARUN S
ART UNIT		PAPER NUMBER		
				1753

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,610

Applicant(s)

HERRINGTON, RODNEY E.

Examiner

Arun S. Phasge

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*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply****A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 31 January 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 22-68 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 22-68 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 22-68 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka in view of Buckley of record for reasons of record.

Double Patenting

Claims 22-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-373 of U.S. Patent No. 6,736,966 in view of Otsuka of record for reasons of record.

Response to Arguments

Applicant's arguments filed 1/31/05 have been fully considered but they are not persuasive.

Applicant argues that the present invention differs from the prior patented invention and would not be combinable with the Otsuka patent, because the patented invention is for the treatment of drinking water, whereas the present invention is directed to the disinfection of surfaces.

The patented invention ('966 patent) forms a disinfecting solution, which is then used to disinfect water, which can be used for drinking. The disinfecting solution is formed by electrolyzing salt containing water to form a chlorine containing oxidant, which is used to sterilize the water.

The Otsuka patent likewise forms an oxidant by electrolyzing salt containing water to form a chlorine containing oxidant (see abstract). The oxidant is then used for disinfecting surfaces.

Applicant argues "placing drinking water on a surface does not disinfect that surface." It should be stated that drinking water is not the oxidant; rather it is the treated or disinfected solution. The placing of the oxidant would disinfect surfaces as well as disinfecting water to make it potable.

Applicant finds no expectation of success in combining the references as of record. One having ordinary skill in the art would have been motivated by the treatment disclosed by Herrington patent, where an oxidant solution formed by the electrolysis of a salt solution is used to sanitize a liquid and the Otsuka patent which teaches the use of an oxidant solution formed by the electrolysis of a salt solution to sanitize a surface. Further one having ordinary skill in the art would have understood that there was a reasonable expectation of success, because the

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oxidant formed by Herrington sterilizes (or kills microorganisms) and the Otsuka patent teaches that the oxidant sterilizes microorganisms.

Applicant further argues against the combination of Otsuka in view of Buckley by stating that "neither reference discloses a portable container for holding a sanitizing solution..." The Otsuka patent teaches that the oxidant can be produced in a portable unit (see col. 11, lines 14-20).

Applicant argues that the Otsuka patent "does not teach storing the sanitization solution after it is created.." The reference however does disclose that the oxidant resides in the sprayer after the electrolysis is stopped and can continue to be used to treat the surface (see col. 13, lines 8-22).

Accordingly, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the disclosure of the Otsuka patent with the teachings of the Buckley patent to form an oxidant and mixing the oxidant with water to form a sterilizing solution, because the Buckley patent teaches such a modification routinely used in the art to form an electrolytically produced sterilizing solution.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is (571) 272-1345. The examiner can normally be reached on MONDAY-THURSDAY, 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571) 272-1342. The fax

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arun S. Phasge
Primary Examiner
Art Unit 1753

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